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National Center for Chronic Disease Prevention and Health Promotion

Tobacco Information and Prevention Source (TIPS)

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Selected Actions of the U.S. Government Regarding the Regulation of Tobacco Sales, Marketing, and Use

(excluding laws pertaining to agriculture or excise tax)

Legislation

Food and Drugs Act of 1906

- First federal food and drug law
- No express reference to tobacco products
- Definition of a drug includes medicines and preparations listed in U.S. Pharmacopeia or National Formulary.
- 1914 interpretation advised that tobacco be included only when used to cure, mitigate, or prevent disease.

Federal Food, Drug, and Cosmetic Act (FFDCA) of 1938

- Superseded 1906 Act
- Definition of a "drug" includes "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals" and "articles (other than food) intended to affect the structure or any function of the body of man or other animals"
- FDA has asserted jurisdiction in cases where the manufacturer or vendor has made medical claims.

1953 — Fairfax cigarettes (manufacturer claimed these prevented respiratory and other diseases)

1959 — Trim Reducing-Aid Cigarettes (contained the additive tartaric acid, which was claimed to aid in weight reduction)

- FDA has asserted jurisdiction over alternative nicotine-delivery products

1984 — Nicotine Polacrilex gum

1985 — Favor Smokeless Cigarette (nicotine-delivery device) (ruled a "new drug," intended to treat nicotine dependence and to affect the structure and function of the body) (removed from market)

1989 — Masterpiece Tobacs (tobacco chewing gum) (ruled an adulterated food and removed from the market)

1991 — Nicotine patches

Federal Trade Commission (FTC) Act of 1914 (amended in 1938)

- Empowers the FTC to "prevent persons, partnerships, or corporations ... from using unfair or deceptive acts or practices in commerce"
- Between 1945 and 1960, FTC completed seven formal cease-and-desist order proceedings for medical or health claims (e.g., a 1942 complaint countering claims that Kool cigarettes provide extra protection against or cure colds)
- In January 1964, FTC proposed a rule to strictly regulate the imagery and copy of cigarette ads to prohibit explicit or implicit health claims
- 1983 — FTC determines that its testing procedures may have "significantly underestimated the level of tar, nicotine, and carbon monoxide that smokers received from smoking" certain low-tar cigarettes. Prohibits Brown and Williamson Tobacco Company from using the tar rating for Barclay cigarettes in advertising, packaging or promotions because of problems with the testing methodology and consumers' possible reliance on that information. FTC authorized revised labeling in 1986.
- 1985 — FTC acts to remove the RJ Reynolds advertisements, "Of Cigarettes and Science," in which the multiple risk factor intervention trial (MRFIT) results were misinterpreted
- 1999 — FTC requires RJ Reynolds to add a label to packages and ads explaining that "no additives" does not make Winston cigarettes safer.

Federal Hazardous Substances Labeling Act (FHSA) of 1960

- Authorized FDA to regulate substances that are hazardous (either toxic, corrosive, irritant, strong sensitizers, flammable, or pressure-generating). Such substances may cause substantial personal injury or illness during or as a result of customary use.
- 1963 — FDA expressed its interpretation that tobacco did not fit the "hazardous" criteria stated previously and withheld recommendations pending the release of the report of the Surgeon General's Advisory Committee on Smoking and Health.

Federal Cigarette Labeling and Advertising Act of 1965

- Required package warning label — "Caution: Cigarette Smoking May Be Hazardous to Your Health" (other health warnings prohibited)
- Required no labels on cigarette advertisements (in fact, implemented a three-year prohibition of any such labels)
- Required FTC to report to Congress annually on the effectiveness of cigarette labeling, current cigarette advertising and promotion practices, and to make recommendations for legislation
- Required Department of Health, Education, and Welfare (DHEW) to report annually to Congress on the health consequences of smoking

Public Health Cigarette Smoking Act of 1969

- Required package warning label — "Warning: The Surgeon General Has Determined that Cigarette Smoking Is Dangerous to Your Health" (other health warnings prohibited)
- Temporarily preempted FTC requirement of health labels on advertisements
- Prohibited cigarette advertising on television and radio (authority to Department of Justice [DOJ])
- Prevents States or localities from regulating or prohibiting cigarette advertising or promotion for health-related reasons

Controlled Substances Act of 1970

- To prevent the abuse of drugs, narcotics, and other addictive substances

- Specifically excludes tobacco from the definition of a "controlled substance"

Consumer Product Safety Act of 1972

- Transferred authority from the FDA to regulate hazardous substances as designated by the Federal Hazardous Substances Labeling Act (FHSA) to the Consumer Product Safety Commission (CPSC)
- The term "consumer product" does not include tobacco and tobacco products

Little Cigar Act of 1973

- Bans little cigar advertisements from television and radio (authority to DOJ)

1976 amendment to the Federal Hazardous Substances Labeling Act of 1960

- The term "hazardous substance" shall not apply to tobacco and tobacco products (passed when the American Public Health Association petitioned CPSC to set a maximum level of 21 mg. of tar in cigarettes)

Toxic Substances Control Act of 1976

- To "regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment"
- The term "chemical substance" does not include tobacco or any tobacco products

Comprehensive Smoking Education Act of 1984

- Institutes four rotating health warning labels (all listed as Surgeon General's Warnings) on cigarette packages and advertisements (smoking causes lung cancer, heart disease and may complicate pregnancy; quitting smoking now greatly reduces serious risks to your health; smoking by pregnant women may result in fetal injury, premature birth, and low birth weight; cigarette smoke contains carbon monoxide) (preempted other package warnings)
- Requires Department of Health and Human Services (DHHS) to publish a biennial status report to Congress on smoking and health
- Creates a Federal Interagency Committee on Smoking and Health

- Requires cigarette industry to provide a confidential list of ingredients added to cigarettes manufactured in or imported into the United States (brand-specific ingredients and quantities not required)

Cigarette Safety Act of 1984

- To determine the technical and commercial feasibility of developing cigarettes and little cigars that would be less likely to ignite upholstered furniture and mattresses

Comprehensive Smokeless Tobacco Health Education Act of 1986

- Institutes three rotating health warning labels on smokeless tobacco packages and advertisements (this product may cause mouth cancer; this product may cause gum disease and tooth loss; this product is not a safe alternative to cigarettes) (preempts other health warnings on packages or advertisements [except billboards])
- Prohibits smokeless tobacco advertising on television and radio
- Requires DHHS to publish a biennial status report to Congress on smokeless tobacco
- Requires FTC to report to Congress on smokeless tobacco sales, advertising, and marketing
- Requires smokeless tobacco companies to provide a confidential list of additives and a specification of nicotine content in smokeless tobacco products
- Requires DHHS to conduct public information campaign on the health hazards of smokeless tobacco

Public Law 100-202 (1987)

- Banned smoking on domestic airline flights scheduled for two hours or less

Public Law 101-164 (1989)

- Bans smoking on domestic airline flights scheduled for six hours or less

Synar Amendment to the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act of 1992

- Requires all states to adopt and enforce restrictions on tobacco sales and distribution to minors.

Pro-Children Act of 1994

- Requires all federally funded children's services to become smoke-free. Expands upon 1993 law that banned smoking in Women, Infants, and Children (WIC) clinics.
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Regulation

(in addition to some of the actions listed previously)

1967

Federal Communications Commission rules that the Fairness Doctrine applies to cigarette advertising. Stations broadcasting cigarette commercials must donate air time to antismoking messages.

1971

Fairness Doctrine antismoking messages end when cigarette advertising is prohibited on radio and television.

1973

Civil Aeronautics Board requires no-smoking sections on all commercial airline flights.

1975

Cigarettes are discontinued in K-rations and C-rations given to soldiers and sailors.

1987

Department of Health and Human Services establishes a smokefree environment in its facilities.

1992

Federal Trade Commission takes first enforcement action under the Comprehensive Smokeless Tobacco Health Education Act, alleging that Pinkerton Tobacco Company's Red Man brand name appeared illegally during a televised event.

1993

Environmental Protection Agency releases final risk assessment on environmental tobacco smoke (ETS) and classifies ETS as a "Group A" (known human) carcinogen.

1994

Occupational Safety and Health Administration announces proposed regulation to prohibit smoking in the workplace, except in separately ventilated smoking rooms.

1994

Department of Defense (DOD) bans smoking in DOD workplaces.

1995

Department of Justice reaches a settlement with Philip Morris to remove tobacco advertisements from the line of sight of television cameras in sports stadiums.

1995

President Clinton announces the publication of the Food and Drug Administration's proposed regulations that would restrict the sale, distribution, and marketing of cigarettes and smokeless tobacco products to protect children and adolescents.

1996

On August 23, 1996, President Clinton announces the nation's first comprehensive program to prevent children and adolescents from smoking cigarettes or using smokeless tobacco and beginning a lifetime of nicotine addiction. With the August 1996 publication of a final rule on tobacco in the Federal Register, the Food and Drug Administration (FDA) will regulate the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. The provisions of the FDA rule are aimed at reducing youth access to tobacco products and the appeal of tobacco advertising to young people. Additionally, the FDA will propose to require the major tobacco companies to educate young people about the real health dangers associated with tobacco use through a multimedia campaign.

1997

President Clinton announces an Executive Order to make all federal workplaces smoke-free.

2000

The Supreme Court rules against the Food and Drug Administration finding that the agency lacks the authority to regulate tobacco.

Additional Reading

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